

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-05-IH-0189
)	
)	
Communication Services Integrated, Inc.)	NAL/Acct. No. 200632080004
)	
Apparent Liability for Forfeiture)	FRN No. 0012390167
)	

**NOTICE OF APPARENT LIABILITY
FOR FORFEITURE AND ORDER**

Adopted: October 31, 2005

Released: October 31, 2005

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that a telecommunications provider, Communication Services Integrated, Inc. (“CSII”), operating since 2001 and at least indirectly benefiting from the federal programs supporting the telecommunications industry since that time, apparently failed to meet its statutory and regulatory obligations relating to the universal service program. Based upon the facts and circumstances surrounding this matter we conclude that this carrier is apparently liable for a total forfeiture of \$462,638.

2. We specifically find that CSII has apparently violated section 64.1195 of the Commission’s rules by willfully and repeatedly failing to register with the Commission until February 2005.¹ We also find that CSII has apparently violated section 54.711(a) of the Commission’s rules by failing to submit certain Telecommunications Reporting Worksheets (“Worksheets”) from 2002 to 2005.² Finally, we find that CSII has apparently violated section 254(d) of the Communications Act of 1934, as amended (the “Act”),³ and section 54.706(a) of the Commission’s rules by willfully and repeatedly failing to contribute to the Universal Service Fund (“USF”).⁴

3. We are resolved to ensure a level playing field for all companies that are required to contribute to the maintenance of Congressionally mandated programs, including the federal universal service program. The failure of a carrier to fulfill its obligation to contribute to these programs has a direct and significant detrimental impact on the programs and on other industry participants because that failure removes from the base of contributions telecommunications revenues that otherwise should be included, thereby forcing other telecommunications carriers to shoulder additional costs associated with

¹ 47 C.F.R. § 64.1195.

² 47 C.F.R. § 54.711(a).

³ 47 U.S.C. § 254(d).

⁴ 47 C.F.R. § 54.706(a).

the programs. Thus, this *NAL* and others like it represent one element in a comprehensive approach to improving the efficacy and fairness of the universal service program as well as reducing waste, fraud and abuse in the program.

4. We order CSII to file with the Universal Service Administrative Company (“USAC”) within thirty days all annual Telecommunications Reporting Worksheets required under the Commission’s rules from the date that CSII commenced providing telecommunications services in the United States to the date of this *NAL*.⁵

II. BACKGROUND

5. The Commission is charged by Congress with regulating interstate and international telecommunications and ensuring that providers of such telecommunications comply with the requirements imposed on them by the Act and our rules.⁶ The Commission also has been charged by Congress to establish, administer and maintain various telecommunications regulatory programs, and to fund these programs through assessments on the telecommunications providers that benefit from them. To accomplish these goals, the Commission established “a central repository of key facts about carriers” through which it could monitor the entry and operation of interstate telecommunications providers to ensure, among other things, that they are qualified, do not engage in fraud, and do not evade oversight.⁷ Commission rules require that, upon entry or anticipated entry into interstate telecommunications markets, telecommunications carriers register by submitting information on FCC Form 499-A, also known as the annual Telecommunications Reporting Worksheet.⁸ The Commission also requires telecommunications providers to submit financial information on annual and, with some exceptions not applicable to CSII since 2003,⁹ quarterly short-form Worksheets to enable the Commission to determine and collect the statutorily mandated program assessments.¹⁰

6. The Telecommunications Act of 1996 codified Congress’ historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable,

⁵ The Commission has appointed USAC as the administrator of federal universal service support mechanisms and has made it responsible for billing and collection of USF contributions. 47 C.F.R. §§ 54.701(a), 54.702(b).

⁶ See, e.g., 47 U.S.C. § 151.

⁷ See *Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16024 (2000) (“*Carrier Selection Order*”).

⁸ 47 C.F.R. § 64.1195.

⁹ Based on CSII’s reported revenue for 2002, CSII was a *de minimis* carrier in 2002, and therefore was not required to file quarterly Worksheets in 2002. See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Gary Middlebrooks, Chief Executive Officer, Communication Services Integrated, Inc., dated March 10, 2005; Letter from Communication Services Integrated, Inc., to Diana Lee, Investigations and Hearings Division, Enforcement Bureau, FCC, dated March 30, 2005 (attaching supplemental long distance revenue information) (“CSII Supplemental Response”).

¹⁰ See 47 U.S.C. §§ 225(d)(3); 254(d). In 1999, to streamline the administration of the programs and to ease the burden on regulatees, the Commission consolidated the information filing requirements for multiple telecommunications regulatory programs into the annual Telecommunications Reporting Worksheet. See *1998 Biennial Regulatory Review*, Report and Order, 14 FCC Rcd 16602 (1999). The next year the Commission revised the Telecommunications Reporting Worksheet slightly to collect the additional information necessary to achieve its goal of establishing a central repository for interstate telecommunications providers by the least provider-burdensome method. *Carrier Selection Order*, 15 FCC Rcd at 16026.

quality telecommunications services.¹¹ In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”¹² In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to contribute to the Universal Service Fund based upon their interstate and international end-user telecommunications revenues.¹³ Failure by some providers to pay their share into the USF skews the playing field by providing non-paying providers an economic advantage over their competitors who must shoulder more than their fair share of the costs of the Fund.

7. The Commission has established specific procedures to administer the universal service program. A carrier must file Worksheets for the purpose of determining its USF payments.¹⁴ These periodic filings trigger a determination of liability, if any, and subsequent billing and collection by USAC. USAC uses the revenue projections submitted on the quarterly filings to determine each carrier’s universal service contribution amount.¹⁵ Carriers are required to pay their monthly USF contribution by the date shown on their invoice.¹⁶ The Commission’s rules explicitly warn contributors that failure to file their forms or submit their payments potentially subjects them to enforcement action.¹⁷ Further, under the Commission’s “red light rule,” action will be withheld on any application to the Commission or request for authorization made by any entity that has failed to pay when due its regulatory program payments, such as USF contributions, and if payment or payment arrangements are not made within 30 days from notice to the applicant, such applications or requests will be dismissed.¹⁸

¹¹ The Telecommunications Act of 1996 amended the Communications Act of 1934. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹² 47 U.S.C. § 254(d).

¹³ 47 C.F.R. § 54.706(b). Since April 1, 2003, carrier contributions have been based on a carrier’s projected, rather than historical, revenues. *Id.*

¹⁴ Upon submission of a Form 499-A registration, the carrier is issued a filer identification number by USAC. The filer identification number is then to be included on all further filings by the company and is used by the Commission and its administrators to track the carrier’s contributions and invoices.

¹⁵ Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up. *See Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001); 47 C.F.R. § 54.709(a).

¹⁶ *See Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19896, ¶ 5 (2003); 47 C.F.R. § 54.711(a) (“The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.”). *See, e.g.*, “Proposed Third Quarter 2003 Contribution Factor,” *Public Notice*, 18 FCC Rcd 11442 (WCB 2003) (“Contribution payments are due on the date shown on the [USAC] invoice.”) The Act and our rules, however, do not condition payment on receipt of an invoice or other notice from USAC. *See* 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(b). A carrier that does not file may not receive an invoice from USAC, but is nonetheless required to contribute to the universal service fund, unless its revenues are considered *de minimis*. *Globcom, Inc.*, 18 FCC Rcd at 19896, ¶ 5 & n.22. The instructions for the Telecommunications Reporting Worksheet include tables for carriers to determine their approximate annual contributions based on their projected telecommunications revenues. Providers whose annual contribution is less than \$10,000 are considered *de minimis* and exempted from contributing to the USF. 47 C.F.R. § 54.708. CSII has not qualified for the *de minimis* exemption since 2003.

¹⁷ 47 C.F.R. § 54.713.

¹⁸ 47 C.F.R. § 1.1910. The rule went into effect on November 1, 2004. *See* “FCC Announces Brief Delay in Enforcement of Red Light Rule,” *Public Notice*, 19 FCC Rcd 19452 (2004).

8. CSII is a Georgia-based telecommunications carrier that began providing interstate telecommunications service in the United States in 2001.¹⁹ In 2004, the Enforcement Bureau (“Bureau”) audit staff sought to identify resellers of telecommunications service that failed to register as telecommunications service providers with the Commission, and thus may also have failed to satisfy various Commission program requirements.²⁰ In order to identify such resellers, the Bureau audit staff compared lists of resellers provided by wholesale service providers against the Commission’s central repository of registered telecommunications service providers with filer identification numbers. If a reseller did not appear to have an identification number, the audit staff sent an inquiry to that reseller. On March 30 and June 18, 2004, the Bureau’s audit staff sent letters to CSII requesting information pertaining to CSII’s compliance with section 64.1195 of the Commission’s rules.²¹ On January 5, 2005, CSII sent an e-mail to Bureau audit staff, claiming that the carrier was “under the impression” it was *de minimis*.²² In response, Bureau audit staff informed CSII that the carrier was nonetheless required to register with the Commission.²³ Shortly thereafter, on February 23, 2005, several years after it began providing service and more than 10 months after the Bureau sent CSII its first letter, CSII registered pursuant to section 64.1195 of the Commission’s rules²⁴ and untimely filed its 2004 annual Worksheet (reporting 2003 revenues).

9. On March 10, 2005, the Bureau issued a letter of inquiry (“LOI”) to CSII.²⁵ The LOI directed CSII, among other things, to submit a sworn written response to a series of questions relating to CSII’s apparent failure to register and file Telecommunications Reporting Worksheets in a timely manner and to make mandated federal telecommunications regulatory program payments. CSII responded to the LOI on March 28, 2005²⁶ and provided supplemental revenue information on March 30, 2005.²⁷

10. Subsequently, on April 30 and July 27, 2005, CSII timely-filed its 2005 annual Worksheet (reporting 2004 actual revenues) and its quarterly Worksheet due on August 1, 2005 (reporting projected revenues to calculate monthly assessments for the fourth quarter 2005). Notwithstanding its e-mail to the Bureau claiming it was *de minimis*, CSII projected interstate and international telecommunications revenues for the fourth quarter of 2005 alone that surpassed the *de*

¹⁹ See Response to Data Requests/Request for Documents, EB-05-IH-0189, at 4, dated March 28, 2005 (“March 28, 2005 LOI Response”); <http://www.csii.net/index2.html> (last accessed on October 27, 2005).

²⁰ See 47 C.F.R. § 64.1195(a).

²¹ See Letter from Hugh Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, to Communication Services Integrated, Inc., dated March 30, 2004 (“March 30, 2004 Audit Letter”); Letter from Hugh Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, to Communication Services Integrated, Inc., dated June 18, 2004 (“June 18, 2004 Audit Letter”) (collectively, “Audit Letters”).

²² See e-mail from Sherry Holt, Communication Services Integrated, Inc., to Nand Gupta, Investigations and Hearings Division, January 5, 2005, 12:04 p.m. E.S.T. Providers whose annual contribution is less than \$10,000 are covered by the Commission’s “*de minimis* rule” and are exempted from contributing to the USF. 47 C.F.R. § 54.708.

²³ See e-mail from Nand Gupta, Investigations & Hearings Division, to Sherry Holt, Communication Services Integrated, Inc., January 05, 2005, 16:13 p.m. E.S.T.

²⁴ 47 C.F.R. § 64.1195.

²⁵ See *supra* n. 9.

²⁶ See *supra* n. 19.

²⁷ See CSII Supplemental Response.

minimis threshold for all of 2005. CSII still failed to file annual Worksheets due in the years 2002 and 2003, and quarterly Worksheets due November 1, 2004, February 1, 2005, and May 1, 2005. In July 2005, USAC sent CSII an invoice for \$10,359 reflecting one-third of the debt owed for the limited period that CSII reported, which CSII timely paid.

III. DISCUSSION

11. Under section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁸ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.²⁹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,³⁰ and the Commission has so interpreted the term in the section 503(b) context.³¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.³² “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.³³ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.³⁴ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.³⁵ As set forth below, we conclude under this standard that CSII is apparently liable for a forfeiture for its apparent willful and repeated violations of section 254(d) of the Act³⁶ and sections 54.706(a), 54.711(a), and 64.1195 of the Commission’s rules.³⁷

12. The fundamental issues in this case are whether CSII apparently violated the Act and the Commission’s rules by: (1) willfully or repeatedly failing to register pursuant to section 64.1195 of the Commission’s rules;³⁸ (2) willfully or repeatedly failing to file Telecommunications Reporting Worksheets; and (3) willfully or repeatedly failing to make requisite contributions toward the Universal Service Fund. We answer these questions affirmatively. Based on a preponderance of the evidence, we conclude that CSII is apparently liable for a forfeiture of \$462,638 for apparently willfully and

²⁸ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

²⁹ 47 U.S.C. § 312(f)(1).

³⁰ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

³¹ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

³² See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

³³ *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9; *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5.

³⁴ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

³⁵ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (“*SBC Forfeiture Order*”) (forfeiture paid).

³⁶ 47 U.S.C. § 254(d).

³⁷ 47 C.F.R. §§ 54.706(a), 54.711(a), and 64.1195.

³⁸ 47 C.F.R. § 64.1195.

repeatedly violating section 254(d) of the Act,³⁹ and sections 54.706(a), 54.711(a), and 64.1195 of the Commission's rules.⁴⁰

13. Specifically, we propose the following forfeitures for apparent violations within the last year: (1) \$100,000 for failure to register pursuant to section 64.1195 of the Commission's rules;⁴¹ (2) \$150,000 for failure to file three Telecommunications Reporting Worksheets; and (3) \$212,638 for failure to make nine monthly USF contributions on a timely basis. Although we propose forfeitures only for apparent violations within the last year, we discuss below CSII's noncompliance in prior years to demonstrate the scope of CSII's misconduct and provide context to the misconduct that is within the statute of limitations period.

A. Registration with the Commission

14. We conclude that CSII has apparently violated section 64.1195(a) of the Commission's rules by failing to register with the Commission from 2001 until February 23, 2005.⁴² CSII's failure to register constitutes a clear violation of a vital Commission rule. Section 64.1195(a) of the Commission's rules unambiguously requires that all carriers that provide, or plan to provide, interstate telecommunications services register with the Commission by submitting specified information.⁴³ Although CSII has been providing interstate telecommunications services since 2001, it failed to register in accordance with section 64.1195(a) until February 23, 2005, many months after the Bureau sent CSII the Audit Letters. As a result of its misconduct, CSII operated for over three years without participation in any of the programs tied to registration. As an interstate telecommunications carrier, CSII had a clear and affirmative duty to apprise itself of, and satisfy, its federal obligations.⁴⁴

15. We view CSII's apparent failure to register for over three years as a serious dereliction of its responsibilities under the Act and our rules. A carrier's compliance with the Commission's registration requirement is critical to the administration of the USF and TRS programs, and to fulfilling Congress' objectives in sections 254(d) and 225(b)(1) of the Act. As we noted above, a carrier's duty to register upon entry, or anticipated entry, into interstate telecommunications markets is essential to the

³⁹ 47 U.S.C. § 254(d).

⁴⁰ 47 C.F.R. §§ 54.706(a), 54.711(a), 64.1195.

⁴¹ 47 C.F.R. § 64.1195.

⁴² 47 C.F.R. § 64.1195(a); *Carrier Selection Order*, 15 FCC Rcd 15996, 16025 (requiring existing carriers like CSII to register on the date the new registration requirement becomes effective by means of certain information in FCC Form 499-A); 66 FR 17083 (2001) (announcing that OMB-approved information collection requirement in section 64.1195 would take effect on April 2, 2001).

⁴³ *Id.* The Commission adopted the registration requirement in section 64.1195(a) after finding that such a requirement would enable it to better monitor the entry of carriers into the interstate telecommunications market and any associated increases in slamming activity, and, among other things, would enhance the Commission's ability to take appropriate enforcement action against carriers that have demonstrated a pattern or practice of slamming. *See Carrier Selection Order*, 15 FCC Rcd at 16024 ¶ 62.

⁴⁴ *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17099, ¶ 22 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999) ("[t]he Commission expects, and it is each licensee's obligation, to know and comply with all of the Commission's rules."); *Telecom House, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-168, 2005 WL 2233570 (F.C.C.) at ¶ 29 (released Sept. 13, 2005); *InPhonic, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-145, 2005 WL 1750418 (F.C.C.) at ¶ 24 (released July 25, 2005); *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-146, 2005 WL 1750420 (F.C.C.) at ¶ 28 (released July 25, 2005).

fulfillment of the USF, TRS, and other regulatory program missions because it identifies the company to the various program administrators and brings the carrier within the purview and oversight of those administrators. If a carrier never identifies itself as a telecommunications provider by properly registering under the Commission's rules, then neither the Commission nor the various program administrators can ascertain whether that carrier has fulfilled other regulatory obligations, including the requirement that carriers file Worksheets and contribute to USF, TRS, and other regulatory programs. Moreover, the program administrators have no basis upon which to invoice the carrier for contributions. A telecommunications carrier that fails to register thus can operate outside of the Commission's oversight and evade its federal obligations to contribute toward the vital programs linked to registration.

16. The impact of a carrier's failure to register is no less severe where, as here, that carrier ultimately registers with the Commission. Although CSII registered on February 23, 2005, and has apparently filed some of the required Worksheets in the last few months, CSII delayed its registration for an extended period of time and took no action until long after receiving letters from the Bureau.⁴⁵ The Commission has repeatedly stated that post-investigation corrective measures to address a violation do not eliminate a licensee's responsibility for the period during which the violation occurred.⁴⁶ Based on a preponderance of the evidence, therefore, we find that CSII apparently has violated section 64.1195(a) of the Commission's rules by willfully and repeatedly failing to register from 2001 until February 23, 2005.⁴⁷

B. Submission of Telecommunications Reporting Worksheets

17. We also conclude that CSII apparently has violated section 54.711(a) of the Commission's rules by willfully and repeatedly failing to file certain Telecommunications Reporting Worksheets on a timely basis from 2002 through February 2005. Section 54.711(a) of the Commission's rules clearly establishes a carrier's obligation to file periodic Telecommunications Reporting Worksheets.⁴⁸ A carrier's failure to file these Worksheets as required has serious implications for the USF. As discussed above, the filing of a Telecommunications Reporting Worksheet prompts a determination of liability for, and subsequent billing and collection of, payments by the administrators of the Universal Service contributions. The failure of a carrier such as CSII to abide by its federal filing obligation has a direct and profound detrimental impact by removing from the base of USF contributions telecommunications revenues that otherwise should be included, thereby shifting to compliant carriers additional economic burdens associated with the federal universal service program.⁴⁹ Consequently, a

⁴⁵ See March 30, 2004 Audit Letter, June 18, 2004 Audit Letter.

⁴⁶ *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71, (2002); *America's Tele-Network Corp.*, Order of Forfeiture, 16 FCC Rcd 22350, 22355, ¶ 15 (2001); *Coleman Enters., Inc. d/b/a/ Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24388, ¶ 8 (2000).

⁴⁷ The proposed forfeitures in this *NAL* relate only to violations occurring within a year of this *NAL*.

⁴⁸ 47 C.F.R. § 54.711(a).

⁴⁹ Sixty days prior to the start of each quarter, USAC is required to provide the Commission with a projection of the high cost, low income, schools and libraries, and rural health care funding requirements for the following quarter. See www.universalservice.org/overview/filings. Based on USAC's projection of the needs of the USF, and revenue projections from the registered carriers subject to universal service requirements, the Commission establishes a specific percentage of interstate and international end-user revenues that each subject telecommunications provider must contribute toward the USF. This percentage is called the contribution factor. The contribution factor, and, consequently, the amount owed to the USF by each affected telecommunications company, changes each quarter, depending on the needs of the USF and carrier-provided revenue projections. See www.fcc.gov/wcb/universal_service/quarter. Thus, in cases where a carrier, such as CSII, fails to file required Worksheets reporting its revenue projections in a timely fashion, its revenues are excluded from the contribution

carrier's failure to file required Worksheets frustrates the very purpose for which Congress enacted section 254(d) – to ensure that every interstate carrier “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁵⁰ Viewed in this context, the Telecommunications Reporting Worksheet is not only an administrative tool, but also a fundamental and critical component of the Commission's Universal Service program.

18. CSII had repeatedly failed to comply with its filing obligation prior to the Bureau's investigation. Although CSII has been providing telecommunication services since 2001, it had not filed annual Worksheets in 2002 or 2003, and filed its 2004 annual Worksheet almost one year late. While it did file its 2005 annual Worksheet on time, it did so only after the Bureau's inquiries. Moreover, even within the past year, CSII failed to file the quarterly Worksheets due November 1, 2004, and February 1 and May 1, 2005.

19. Based on a preponderance of the evidence, we find that CSII apparently has violated section 254 of the Act⁵¹ and section 54.711 of the Commission's rules⁵² by willfully and repeatedly failing to timely file required information with the Commission on multiple occasions since 2002, including its failure to make three quarterly Worksheet filings within the last year. We therefore propose a forfeiture for CSII's failure to file the quarterly Worksheets due November 1, 2004, and February 1 and May 1, 2005.

C. Universal Service Contributions

20. We further conclude that CSII apparently violated section 254(d) of the Act and section 54.706 of the Commission's rules by willfully and repeatedly failing to contribute to universal service support mechanisms.⁵³ Section 54.706(c) of the Commission's rules unambiguously directs that “entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support programs.”⁵⁴ Since 2003, CSII was required, pursuant to section 54.706(b) of the Commission's rules, to contribute to universal service mechanisms based upon either its historical or projected revenues.⁵⁵ Despite this requirement, CSII made no universal service contributions until August 8, 2005.⁵⁶ As we previously have stated,

[c]arrier nonpayment of universal service contributions undermines the efficiency and effectiveness of the universal service support mechanisms. Moreover, delinquent carriers may obtain a competitive advantage over carriers complying with the Act and our rules. We consider universal service nonpayment to be a

base from which universal assessments are derived, and the economic burden of contributing falls disproportionately on carriers that have satisfied their reporting obligations.

⁵⁰ 47 U.S.C. § 254(d).

⁵¹ 47 U.S.C. § 254.

⁵² 47 C.F.R. §§ 54.711, 64.604.

⁵³ 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

⁵⁴ 47 C.F.R. § 54.706(c).

⁵⁵ See 47 C.F.R. § 54.706(b).

⁵⁶ See USAC August 2005 billing to CSII. USAC assessed the amount due in August 2005 solely based on the 2004 and 2005 annual Worksheets, and the payment thus represented only a partial assessment of CSII's total USF contribution obligation for the month.

serious threat to a key goal of Congress and one of the Commission's primary responsibilities.⁵⁷

Based on a preponderance of the evidence, we find that CSII apparently has violated sections 254(d) of the Act and 54.706 of the Commission's rules by willfully and repeatedly failing to make its monthly universal service contribution payments since 2003, including nine such failures within the past year, *i.e.*, the payments due November 15 and December 15, 2004, and January 14, February 15, March 15, April 15, May 13, June 15, and July 15, 2005.

D. Proposed Forfeiture

21. Section 503(b)(1)(B) of the Act provides that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁵⁸ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1.325 million for a single act or failure to act.⁵⁹ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁶⁰

22. Under section 503(b)(6) of the Act, we may only propose forfeitures for apparent violations that occurred within one year of the date of this *NAL*.⁶¹ Nevertheless, section 503(b) does not bar us from assessing whether CSII's conduct prior to that time period apparently violated the Act or our rules in determining the appropriate forfeiture amount for those violations within the statute of limitations.⁶² Therefore, although we find that CSII apparently violated the Act and our rules for over three years, we propose forfeitures here only for violations that occurred within the last year.

23. This case involves a carrier's failure both to register and submit any Telecommunications Reporting Worksheets from the time it commenced providing telecommunications services until after it received a letter from the Bureau⁶³ – in this case, a period of over three years. We find CSII's failure to discharge its federal reporting obligations to be particularly egregious. The registration and filing of Telecommunications Reporting Worksheets are fundamental to the implementation of our central repository of carriers and to the administration of multiple statutorily derived programs – including the USF. Where, as here, a carrier ignores its obligations by wholly failing to register – thereby affecting the

⁵⁷ *Globcom, Inc.*, 18 FCC Rcd at 19903, ¶ 26 (2003).

⁵⁸ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

⁵⁹ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2). Effective September 7, 2004, the Commission amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. *See Amendment of Section 1.90 of the Commission's Rules*, Order, 19 FCC Rcd 10945, 10946 ¶ 6 (2004).

⁶⁰ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, ¶ 27; 47 C.F.R. § 1.80(b).

⁶¹ 47 U.S.C. § 503(b)(6)(B); *see also* 47 C.F.R. § 1.80(c)(3).

⁶² *See, e.g., Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-147, 2005 WL 1750417 (F.C.C.) at ¶ 24 (released July 25, 2005); *InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 24; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 28; *Globcom, Inc.*, 18 FCC Rcd at 19903; *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 (2000); *Liab. of E. Broad. Corp.*, Memorandum Opinion and Order, 10 F.C.C. 2d 37 (1967).

⁶³ *See InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 25; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 29.

time and manner in which these important federal programs are funded – it undermines the programs and thwarts the purposes for which Congress and the Commission established them.

24. Recently, we have held that a substantial forfeiture of \$100,000 is warranted for a carrier's failure to register with the Commission.⁶⁴ We explained that "[t]his egregious behavior strikes at the core of our ability to implement and enforce the Act and our rules effectively, thus warranting a substantial forfeiture."⁶⁵ A carrier that fails to register hampers "efficient and effective Commission enforcement by delaying detection of, and action against, its behavior . . . and imposes a substantial burden on the Commission, which can only identify such carriers through compliance review programs that require significant amounts of staff time and resources."⁶⁶ CSII failed to register until February 23, 2005. Taking into account all of the factors enumerated in section 503(b)(2)(D) of the Act, we therefore conclude that a proposed forfeiture of \$100,000 is warranted.

25. Similarly, in the past, we have held that a substantial forfeiture of \$50,000 is warranted for a carrier's failure to file a Telecommunications Reporting Worksheet for revenue reporting purposes.⁶⁷ We find that CSII's willful and repeated failure to file periodic Telecommunications Reporting Worksheets is egregious. As we noted above, a carrier's obligation to file these Worksheets is directly linked to, and thus has serious implications for, administration of the USF and other regulatory programs. By ignoring its reporting obligations, CSII has unilaterally shifted to compliant carriers and their customers the economic costs associated with the universal service and other regulatory programs. Therefore, we find that CSII is apparently liable for a \$150,000 forfeiture for its failure to file three Worksheets within the last year. As discussed above, CSII failed to file three quarterly Worksheets due November 1, 2004 and February 1 and May 1, 2005.

26. Based on the facts above, it also appears that CSII has failed to make the requisite contributions into the Universal Service Fund for a period of over two years. Nonpayment of universal service contributions is an egregious offense that bestows on delinquent carriers an unfair competitive advantage by shifting to compliant carriers the economic costs and burdens associated with universal service. A carrier's failure to make required universal service contributions frustrates Congress' policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications providers.⁶⁸ The Commission has established a base forfeiture amount of \$20,000 for each month in which a carrier has failed to make required universal service contributions.⁶⁹ CSII, as detailed above, failed to make contributions from 2003 until July 2005. Nine of those violations occurred within the last year. Consequently, we find CSII apparently liable for a base forfeiture of \$180,000 for its willful and repeated failure to make universal service contributions for the period of November 2004 through July 2005.

⁶⁴ See *Telecom House, Inc.*, 2005 WL 2233570 (F.C.C.) at ¶ 29; *InPhonic, Inc.*, 2005 WL at 1750418 (F.C.C.) at ¶ 26; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 30.

⁶⁵ *InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 26; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 30.

⁶⁶ *InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 26; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 30.

⁶⁷ *Globcom, Inc.*, 18 FCC Rcd at 19905. See also *Carrera Communications, Inc.*, 2005 WL 1750417 (F.C.C.) at ¶ 25; *InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 27; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 31.

⁶⁸ See 47 U.S.C. § 254(d).

⁶⁹ See *Globcom, Inc.*, 18 FCC Rcd at 19903-19904, ¶¶ 25-27. See also *Carrera Communications, Inc.*, 2005 WL 1750417 (F.C.C.) at ¶ 26; *InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 28; *Telecom Mgmt., Inc.*, 2005 WL 1949643 (F.C.C.) at ¶ 17; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 32.

27. We also conclude that an upward adjustment to the base forfeiture associated with CSII's failure to pay USF is appropriate. In the past, we have calculated upward adjustments to forfeitures for failure to make USF payments based on half of the company's unpaid contributions.⁷⁰ In situations such as this one, however, the Commission has held previously,⁷¹ where the subject company has failed to file timely and accurate information, we cannot determine the full amount owed to the funds until and unless the subject company provides complete and accurate information to the fund administrators. Thus, our ability to calculate and assess accurately an upward adjustment based on a percentage of unpaid contribution amounts can be inhibited by the violator. In this regard, Commission enforcement action can be delayed pending the company's full revenue disclosures, or foreclosed altogether if the statute of limitations expires during the period of delay. In such circumstances, companies that comply with our registration and filing requirements might be worse off than those, like CSII, that appear to ignore them. Such a result is not only unfair, but is bad public policy.

28. As of July 15, 2005, USAC records show that CSII owed approximately \$33,776 in USF contributions for the limited period that it has reported revenue, 2003 and 2004. USF assessments have not been assigned for other periods only because CSII did not properly file the Worksheets for other periods. During the course of the investigation, however, the Bureau received certain revenue information. We have used that revenue information to estimate the amount that CSII should have paid during the periods since it began operations for which it has not filed (approximately \$31,500) for purposes of calculating an upward adjustment of one-half that amount. In total, we estimate CSII owes \$65,276 to the USF. Therefore, taking into account all of the factors enumerated in section 503(b)(2)(D) of the Act, we propose an upward adjustment of \$32,638 for CSII's apparent failure to make universal service contributions. We thus find CSII liable for a proposed forfeiture of \$212,638 for its apparent willful and repeated failure to make contributions into the Universal Service Fund.

IV. CONCLUSION

29. In light of the seriousness, duration and scope of the apparent violations, and to ensure that a company with substantial revenues such as CSII does not consider the proposed forfeiture merely "an affordable cost of doing business,"⁷² we find that a proposed forfeiture in the amount of \$462,638 is warranted. As discussed above, this proposed forfeiture amount includes: (1) a total proposed penalty of \$100,000 for failing to register pursuant to section 64.1195 of the Commission's rules;⁷³ (2) a total proposed penalty of \$150,000 for failing to file three Telecommunications Reporting Worksheets within the past year; and (3) a total proposed penalty of \$212,638 for failing to make nine monthly universal service contributions within the past year.

30. We caution that additional violations of the Act or the Commission's rules could subject CSII to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of CSII's operating authority, including disqualification of CSII's principals from the provision of any interstate common carrier services without the prior consent of the

⁷⁰ See, e.g., *Globcom, Inc.*, 18 FCC Rcd at 19903-19904, ¶¶ 25-27. See also *Carrera Communications, Inc.*, 2005 WL 1750417 (F.C.C.) at ¶ 27; *InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 29; *OCMC, Inc.*, 2005 WL 1949644 (F.C.C.) at *Telecom Mgmt., Inc.*, 2005 WL 1949643 (F.C.C.) at ¶ 18; *Telectronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 32.

⁷¹ See, e.g., *Carrera Communications, Inc.*, 2005 WL 1750417 (F.C.C.) at ¶ 27; *Telectronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 33.

⁷² *Forfeiture Policy Statement*, 12 FCC Rcd at 17099; see also 47 C.F.R. § 1.80(b)(4).

⁷³ 47 C.F.R. § 64.1195.

Commission.⁷⁴ In addition, we note that, to the extent CSII is ever found to be delinquent on any debt owed to the Commission (e.g., has failed to pay all of its USF contributions), the Commission will not act on, and may dismiss, any application or request for authorization filed by CSII, in accordance with the agency's "red light" rules.⁷⁵ We order CSII to file with USAC within thirty days all annual Telecommunications Reporting Worksheets required under the Commission's rules from the date that CSII commenced providing telecommunications services in the United States to the date of this *NAL*.

V. ORDERING CLAUSES

31. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended,⁷⁶ and section 1.80 of the Commission's rules,⁷⁷ that CSII is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$462,638 for willfully and repeatedly violating the Act and the Commission's rules.

32. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,⁷⁸ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, CSII SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

33. IT IS FURTHER ORDERED THAT, pursuant to sections 4(i), 219(b), and 254(d) of the Act,⁷⁹ and sections 54.706(a) and 54.711(a) of the Commission's rules,⁸⁰ within thirty days of the release of this NOTICE OF APPARENT LIABILITY AND ORDER, CSII SHALL SUBMIT to USAC all annual Telecommunications Reporting Worksheets required under the Commission's rules from the date that CSII commenced providing telecommunications services in the United States to the date of this *NAL*.

34. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

35. The response, if any, to this NOTICE OF APPARENT LIABILITY must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-A237, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

⁷⁴ See *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

⁷⁵ 47 C.F.R. § 1.1910.

⁷⁶ 47 U.S.C. § 503(b).

⁷⁷ 47 C.F.R. § 1.80.

⁷⁸ See 47 C.F.R. § 1.80(f)(3).

⁷⁹ 47 U.S.C. §§ 4(i), 219(b), and 254(d).

⁸⁰ 47 C.F.R. §§ 54.706(a) and 54.711(a).

36. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

37. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to Chief, Credit and Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁸¹

38. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY AND ORDER shall be sent by certified mail, return receipt requested, to Gary E. Middlebrooks, Chief Executive Officer, Communication Services Integrated, Inc., 105 Park Place Way, Carrollton, GA 30117.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸¹ See 47 C.F.R. § 1.1914.